

November 26, 2007

Ms. Margaret Waters
P.O. Box 209
Bethel, DE 19931

**RE: Freedom of Information Act Complaint
Against Town of Bethel**

Dear Ms. Waters:

On August 23, 2007, our Office received your complaint alleging that the Town of Bethel ("the Town") violated the public record requirements of the Freedom of Information Act, 29 *Del. C.* Ch. 100 ("FOIA"), by not providing you with a copy of the Town Building Code and the Town ordinance enacting that code.

By letter dated August 28, 2007, our Office asked the Town to respond to your complaint in writing by September 7, 2007. We received the Town's response on September 6, 2007.

According to the Town, after you first requested a copy of the Building Code the Town was unable to locate a copy at the Town Office. The Town then contacted the International Code Council which forwarded a copy of the 1982 Revision of the Southern Standard Building Code which you had requested. The Town provided us with a receipt dated September 4, 2007 which you signed acknowledging your receipt of a copy of the Code (311 pages) and the Ordinance Enacting Building Code.

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By letter dated September 10, 2007, we advised that "[u]nless our Office hears from you to the contrary, we consider this matter resolved and are closing our case file."

By letter dated September 18, 2007, you wrote that the issue was not completely resolved. You alleged that the Town did not provide you with a complete copy of the Town ordinance enacting the Building Code. You allege that the ordinance the Town provided to you "did not include Chapter 9, which is the Zoning Ordinance" and that Chapter 10 (floodplain) "is also missing."

By letter dated September 25, 2007, our Office asked the Town to respond in writing to your September 18, 2007 letter by October 5, 2007. Our Office received the Town's response by facsimile on October 4, 2007.

According to the Town, the ordinance enacting the Building Code "was adopted in 1988 and contains eight (8) chapters as shown in the table of contents. The table of contents lists two additional chapters: Chapter 9 – Zoning; and Chapter 10 – Flood Regulations, which are not part of the ordinance. The town had previously adopted a zoning ordinance in 1982 (copy enclosed) and a floodplain ordinance in 1980 (copy enclosed)."

According to the Town, "[t]he reason that the 1988 ordinance has a table of contents listing the two additional chapters appears to have been an attempt at organization of related ordinances into a Town Code. Nothing was missing from the copy of the ordinance [the Town] provided to Ms. Waters . . . The original ordinance bearing the Town Seal and signed by Barry B. Brumbey is on file in the Town Office. The copy [the Town] provided to Margaret Waters . . . is an exact duplicate of it."

RELEVANT STATUTES

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FOIA requires that "[a]ll records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del. C.* §10003(a).

LEGAL ANALYSIS

The Town contends that your original FOIA request was for the Town ordinance enacting the Building Code which you received and that you "never requested the zoning ordinance or the floodplain ordinance until [you] sent a letter to the Attorney General on September 18, 2007."

Our Office agrees that your letter of September 18, 2007 was a new public records request to the Town, though we understand why it may have appeared to you that the ordinance enacting the Building Code which you received from the Town was incomplete without Chapters 9 and 10 referenced in the table of contents. Our Office is satisfied with the Town's explanation that those chapters were not part of the ordinance enacted in 1988, but refer to two earlier ordinances enacted in 1980 (floodplain ordinance) and 1982 (zoning ordinance).

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CONCLUSION

For the foregoing reasons, our Office determines that the Town did not violate the public records requirements of FOIA. On September 4, 2007, the Town provided you with a copy of the Town Building Code and the ordinance enacting that code. Since there was some understandable confusion about the relationship between that ordinance and two earlier ordinances, our Office is enclosing copies of those two earlier ordinances (1980 floodplain and 1982 zoning) which the Town provided to us in its response to your September 18, 2007 letter. Our Office believes that will resolve any outstanding FOIA issues you may have with the Town.

Very truly yours,

W. Michael Tupman, Esquire
Deputy Attorney General

APPROVED

Lawrence W. Lewis, Esquire
State Solicitor

Enclosures (2)

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cc (w/o encls.):

The Honorable Joseph R. Biden, III
Attorney General

Richard S. Gebelein, Esquire
Chief Deputy Attorney General

Keith R. Brady, Esquire
Assistant State Solicitor

John E. Tarburton, Esquire
Town Attorney

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